

**JAN 13 2006****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****CHARLES L. TATUM,****Defendant - Appellant.****No. 04-10014****D.C. No. CR-84-00854-MHP****MEMORANDUM\***

**Appeal from the United States District Court  
for the Northern District of California  
Marilyn H. Patel, District Judge, Presiding**

**Submitted January 9, 2006\*\***

**Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.**

Charles L. Tatum appeals *pro se* from the district court's denial of his motion under Rule 35 of the Federal Rules of Criminal Procedure to reconsider his sentence arising from his guilty-plea conviction for possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a). We have jurisdiction under

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291, and we affirm.

Tatum contends on appeal that the district court erred in construing his motion as a time-barred motion to reduce his sentence under Rule 35(b) rather than a motion for relief from an illegal sentence under Rule 35(a), which would not have been time-barred. As Tatum is primarily contesting the manner in which an otherwise lawful sentence was imposed, the district court did not err in construing it as a motion under Rule 35(b), which was therefore time-barred. *See United States v. Stump*, 914 F.2d 170, 172 (9th Cir. 1990).

Tatum also contends that the Government is barred by the twenty-year statute of limitations under 18 U.S.C. § 3565(h) (repealed) from collecting the \$25,000 fine imposed in the judgment. As it does not appear that Tatum presented this argument to the district court, we need not address it on appeal. *See United States v. Cloud*, 872 F.2d 846, 857 (9th Cir. 1989).

**AFFIRMED.**